

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CAMDEN VICINAGE**

NATHAN H. KELMAN, INC.	:	NO. : 21-13385
	:	
Plaintiff	:	
	:	
v.	:	
	:	
ALUMINUM SHAPES, LLC	:	
	:	
Defendants	:	
	:	

COMPLAINT

I. PRELIMINARY STATEMENT

This is an action for breach of contract on an account stated, on behalf of Plaintiff, Nathan H. Kelman, Inc., (hereinafter “NHK” or “Plaintiff”). Plaintiff is a New York corporation engaged in the business of the collection, reclamation, recycling and sale of scrap metal and paper. As set forth below, NHK has from time to time sold products to Defendant, Aluminum Shapes, LLC (hereinafter “Aluminum Shapes” or “Defendant”), a New Jersey Corporation on an open account. As set forth below, Defendant has failed and refused to make payment on its account, which now has an outstanding balance of \$759,336.10.

This action is brought under the common law of the State of New York.

II. JURISDICTION AND VENUE

1. The original jurisdiction of this Court is invoked, and venue is in this District, pursuant to Title 28 U.S.C. §1332 as arising between citizen of diverse states.

2. Plaintiff, Nathan H. Kelman, Inc. (hereinafter referred to as "NHK" or "Plaintiff"), is a private corporation formed under the laws of the State of New York, with a principal place of business in Cohoes, Albany County, New York.

3. NHK is a resident and citizen of the State of New York.

4. Defendant Aluminum Shapes is a private corporation formed under the laws of the State of New Jersey, with a principal place of business in Delair, Camden County, New Jersey.

5. Aluminum Shapes is a resident and citizen of the State of New Jersey.

IV. STATEMENT OF THE CASE

6. As set forth in the Statement of Account, attached hereto as Exhibit "A", Defendant Aluminum Shapes purchased scrap metal and other goods from NHK between March 22 and July 16, 2019.

7. All orders were placed at Plaintiff's premises in Cohoes, New York and were delivered FOB Delair, New Jersey.

8. Each invoice was payable on a 30 day net basis, as set forth in the exemplar invoice attached hereto as Exhibit B.

9. The total of all invoices was \$ 789,404.76, as set forth in Exhibit A.

10. Despite demand for payment, Aluminum Shapes has only made one payment in the amount of \$ 29,988.66, which was credited against the first order dated March 22, 2019.

11. As set forth in Exhibit A, the outstanding balance on Defendant's account is \$759,336.10.

12. Defendant has not at any time contested the amount due, nor sought any credits for non-conforming delivery or any other cause.

COUNT I
NATHAN H. KELMAN, INC.
v.
ALUMINUM SHAPES, LLC
BREACH OF CONTRACT

13. Paragraphs 1 through 12, inclusive, are incorporated by reference as if fully set forth at length herein.

14. Plaintiff NHK had a contractual agreement with the Defendant as set forth above.

15. The Defendant's non-payment of amounts due and owing to Plaintiff for the products delivered under the agreement constitutes a material breach of the aforementioned agreement.

16. As a direct and proximate cause of Defendants conduct, Plaintiff has suffered substantial injury and damages and continues to suffer same.

17. Plaintiff Nathan H. Kelman, Inc. demands judgment against Defendant in the amount of \$ 759,336.10 together with interest and costs, and such other relief as may be deemed appropriate by the Court.

COUNT II
NATHAN H. KELMAN, INC.
v.
ALUMINUM SHAPES, LLC
PROMISSORY ESTOPPEL

18. Paragraphs 1 through 17, inclusive, are incorporated by reference as if fully set forth at length herein.

19. Defendants are liable for breach of contract, as set forth above.

20. In the alternative, the doctrine of promissory estoppel applies to create an enforceable promise and/or implied contract.

21. Defendant made clear and enforceable promises, representations and entered into verbal agreements with Plaintiff related to their payment for the material knowing and/or reasonably expecting that such promises would induce action and reliance on the part of Plaintiff.

22. Plaintiff, NHK believing it would be paid for such additional material, took action and/or refrained from taking action, as set forth herein, in reliance on the promises.

23. Injustice can only be avoided by enforcing the promise and recognizing the damages to Plaintiff as a result of its reasonable reliance upon the enforceable promises and representations of Defendants as to payment for the additional work.

24. Defendants are promissory estopped from refusing to pay Plaintiff for the additional material.

25. Plaintiff Nathan H. Kelman, Inc. demands judgment against Defendant in the amount of \$ 759,336.10 together with interest and costs, and such other relief as may be deemed appropriate by the Court.

COUNT III
NATHAN H. KELMAN, INC.
v.
ALUMINUM SHAPES, LLC
UNJUST ENRICHMENT

26. Paragraphs 1 through 25, inclusive, are incorporated by reference as if fully set forth at length herein.

27. Plaintiff relied upon the promises made by Defendants regarding their agreement to make payments for the additional materials; and Plaintiff delivered this additional material as per the Defendants' explicit requests and promises.

28. Due to Plaintiff's delivery of the materials, Defendant gained significant economic benefit.

29. Defendant misled the Plaintiff by making it believe that it would make timely payment for the material.

30. It would be unjust for Defendants to retain the benefits they have received and continue to receive as a result of Plaintiff's reliance without payment by Defendants for same; and therefore the Court should order Defendants to pay Plaintiff an amount equal to the amount due and owing as stated in Exhibit A and/or the amount of Defendants' unjust enrichment, whichever is greater.

31. Plaintiff Nathan H. Kelman, Inc. demands judgment against Defendant in the amount of \$ 759,336.10 together with interest and costs, and such other relief as may be deemed appropriate by the Court.

HAHALIS & KOUNOUPIS, P.C.

By: /s/ David L. Deratzian
David L. Deratzian
20 East Broad Street
Bethlehem, PA 18017
(610) 865-2608
Attorneys for Plaintiff
Nathan H. Kelman, Inc.

Date: July 7, 2021

EXHIBIT A

Accounts Receivable Aging
From Shipping Date 07/01/2021

ALUMINUM SHAPES

Wks No.	Shipping Date	Days Out	Current	30 - 60	60 - 90	Over 90	Original Balance	Payments	Adjustments	Outstanding Balance	%
<i>jwhittaker 9000 River Road Delair NJ 08110 USA</i>											
123482	03/22/2019	832	0.00	0.00	0.00	5,922.99	35,911.65	29,988.66	0.00	5,922.99	0.8%
123505	03/25/2019	829	0.00	0.00	0.00	32,880.00	32,880.00	0.00	0.00	32,880.00	4.3%
123521	03/26/2019	828	0.00	0.00	0.00	28,595.00	28,595.00	0.00	0.00	28,595.00	3.8%
123628	03/29/2019	825	0.00	0.00	0.00	34,557.88	34,557.88	0.00	0.00	34,557.88	4.6%
123745	04/01/2019	822	0.00	0.00	0.00	34,255.76	34,255.76	0.00	0.00	34,255.76	4.5%
123806	04/02/2019	821	0.00	0.00	0.00	34,152.01	34,152.01	0.00	0.00	34,152.01	4.5%
123998	04/08/2019	815	0.00	0.00	0.00	34,190.19	34,190.19	0.00	0.00	34,190.19	4.5%
123999	04/08/2019	815	0.00	0.00	0.00	31,872.40	31,872.40	0.00	0.00	31,872.40	4.2%
124009	04/08/2019	815	0.00	0.00	0.00	11,567.18	11,567.18	0.00	0.00	11,567.18	1.5%
124127	04/11/2019	812	0.00	0.00	0.00	41,592.80	41,592.80	0.00	0.00	41,592.80	5.5%
124161	04/15/2019	808	0.00	0.00	0.00	34,665.60	34,665.60	0.00	0.00	34,665.60	4.6%
124476	04/24/2019	799	0.00	0.00	0.00	32,422.13	32,422.13	0.00	0.00	32,422.13	4.3%
124604	04/29/2019	794	0.00	0.00	0.00	34,777.66	34,777.66	0.00	0.00	34,777.66	4.6%
124859	05/07/2019	786	0.00	0.00	0.00	30,193.80	30,193.80	0.00	0.00	30,193.80	4.0%
125038	05/10/2019	783	0.00	0.00	0.00	26,107.52	26,107.52	0.00	0.00	26,107.52	3.4%
125150	05/17/2019	776	0.00	0.00	0.00	35,307.28	35,307.28	0.00	0.00	35,307.28	4.6%
125200	05/20/2019	773	0.00	0.00	0.00	36,891.52	36,891.52	0.00	0.00	36,891.52	4.9%
125447	05/28/2019	765	0.00	0.00	0.00	19,471.20	19,471.20	0.00	0.00	19,471.20	2.6%
125485	05/29/2019	764	0.00	0.00	0.00	21,037.80	21,037.80	0.00	0.00	21,037.80	2.8%
125722	06/04/2019	758	0.00	0.00	0.00	34,990.22	34,990.22	0.00	0.00	34,990.22	4.6%
125829	06/08/2019	754	0.00	0.00	0.00	42,708.28	42,708.28	0.00	0.00	42,708.28	5.6%
126847	07/12/2019	720	0.00	0.00	0.00	37,200.72	37,200.72	0.00	0.00	37,200.72	4.9%
126848	07/15/2019	717	0.00	0.00	0.00	38,925.74	38,925.74	0.00	0.00	38,925.74	5.1%
126732	07/16/2019	716	0.00	0.00	0.00	45,050.42	45,130.42	0.00	-80.00	45,050.42	5.9%

BALANCE DUE USD:

0.00	0.00	0.00	759,336.10	789,404.76	29,988.66	-80.00	759,336.10	100.0%
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EXHIBIT B

PURCHASE ORDER



Aluminum Shapes

LLC

9000 River Road, Delair, NJ 08110

Phone: 856-662-5500 Fax: 856-488-5336

P/O NUMBER	AMEND. NUMBER	PAGE
9031141	0	1
P/O DATE	DESCRIPTION	CURRENCY
01/15/19	Normal	US - USA

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141135
NATHAN H KELMAN, INC
41 EUCLID STREET
COHOES, NY 12047
UNITED STATES

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T
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010623
SHAPES LLC
9000 RIVER ROAD
DELAIR, NJ 08110
USA

518-237-5133

BUYER		TERMS		ORDER TYPE			FOB	SHIP VIA
J. WHITTAKER		0.0%-0,Net30		E-MAIL			OUR PLANT	DELIVERED
LINE/REL	QUANTITY	DATE REQUIRED	DATE PROMISED	UOM	TAX	UNIT PRICE	EXTENDED PRICE	

2 LOADS FEB

001

Part: 6063
Desc: CLEAN PAINTED BALED

001	84000.00	01/15/19	01/15/19	EA	EX	0.8500	71,400.00
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TOTAL EXTENDED PRICE

71,400.00

FILE

ORDERED BY